

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

REALTIME DATA LLC d/b/a IXO,
Plaintiff,
v.

Case No. 6:16-cv-86

HEWLETT PACKARD ENTERPRISE
CO., HP ENTERPRISE SERVICES, LLC,
and SILVER PEAK SYSTEMS, INC.,

JURY TRIAL DEMANDED

Defendants.

**REALTIME DATA LLC d/b/a IXO'S ANSWER TO
SILVER PEAK SYSTEMS, INC.'S COUNTERCLAIMS TO PLAINTIFF'S
COMPLAINT**

Plaintiff-Counterdefendant, Realtime Data LLC d/b/a IXO ("Realtime") answers Counterclaims for Declaratory Judgment of Noninfringement and Invalidity of U.S. Patent Nos. 7,161,506 ("the '506 patent"), 9,054,728 ("the '728 patent"), 8,643,513 ("the '513 patent"), 9,116,908 ("the '908 patent"), and the 7,415,530 ("the '530 patent"), collectively (the "Asserted Patents") of Defendant-Counterclaimant Silver Peak Systems, Inc. ("Defendant"), as follows:

THE PARTIES

1. Admitted.
2. Admitted.

JURISDICTION AND VENUE

3. Admitted.
4. Admitted.
5. Admitted.

6. Admitted that venue is proper in this judicial district, but denied that Silver Peak is entitled to transfer venue and denied that the balance of convenience and the interests of justice weigh in favor of transfer.

7. Admitted.

FIRST COUNTERCLAIM
(DECLARATION OF NON-INFRINGEMENT OF
U.S. PATENT NO. 7,161,506)

8. Realtime incorporates by reference its responses to Paragraphs 1-7 of this Answer to Defendant's Counterclaims as if fully set forth herein.

9. Admitted.

10. Admitted.

11. Realtime admits that it is asserting current allegations of infringement of the '506 patent at this time against Defendant. Otherwise, Realtime denies the allegations in paragraph 11.

12. Realtime admits that Defendant seeks a judgment holding that it does not infringe the '506 patent in any way, but denied that Defendant is entitled to any such judgment.

DEFENDANT'S SECOND COUNTERCLAIM
(DECLARATION OF NON-INFRINGEMENT OF
U.S. PATENT NO. 9,054,728)

13. Realtime incorporates by reference its responses to Paragraphs 1-12 of this Answer to Defendant's Counterclaims as if fully set forth herein.

14. Admitted.

15. Admitted.

16. Realtime admits that it is asserting current allegations of infringement of the '728 patent at this time against Defendant. Otherwise, Realtime denies the allegations in paragraph 16.

17. Realtime admits that Defendant seeks a judgment holding that it does not infringe the '728 patent in any way, but denied that Defendant is entitled to any such judgment.

DEFENDANT'S THIRD COUNTERCLAIM
(DECLARATION OF NON-INFRINGEMENT OF
U.S. PATENT NO. 8,643,513)

18. Realtime incorporates by reference its responses to Paragraphs 1-17 of this Answer to Defendant's Counterclaims as if fully set forth herein.

19. Admitted.

20. Admitted.

21. Realtime admits that it is asserting current allegations of infringement of the '513 patent at this time against Defendant. Otherwise, Realtime denies the allegations in paragraph 21.

22. Realtime admits that Defendant seeks a judgment holding that it does not infringe '513 patent in any way, but denied that Defendant is entitled to any such judgment.

DEFENDANT'S FOURTH COUNTERCLAIM
(DECLARATION OF NON-INFRINGEMENT OF
U.S. PATENT NO. 9,116,908)

23. Realtime incorporates by reference its responses to Paragraphs 1-22 of this Answer to Defendant's Counterclaims as if fully set forth herein.

24. Admitted.

25. Admitted.

26. Realtime admits that it is asserting current allegations of infringement of the '908 patent at this time against Defendant. Otherwise, Realtime denies the allegations in paragraph 26.

27. Realtime admits that Defendant seeks a judgment holding that it does not infringe '908 patent in any way, but denied that Defendant is entitled to any such judgment.

DEFENDANT'S FIFTH COUNTERCLAIM
(DECLARATION OF NON-INFRINGEMENT OF
U.S. PATENT NO. 7,415,530)

28. Realtime incorporates by reference its responses to Paragraphs 1-27 of this Answer to Defendant's Counterclaims as if fully set forth herein.

29. Admitted.

30. Admitted.

31. Realtime admits that it is asserting current allegations of infringement of the '530 patent at this time against Defendant. Otherwise, Realtime denies the allegations in paragraph 31.

32. Realtime admits that Defendant seeks a judgment holding that it does not infringe '530 patent in any way, but denied that Defendant is entitled to any such judgment.

DEFENDANT'S SIXTH COUNTERCLAIM
(DECLARATION OF INVALIDITY OF
U.S. PATENT NO. 7,161,506)

33. Realtime incorporates by reference its responses to Paragraphs 1-32 of this Answer to Defendant's Counterclaims as if fully set forth herein.

34. Admitted.

35. Admitted.

36. Realtime admits that Defendant contends the '506 patent is invalid. Otherwise, Realtime denies the allegations in paragraph 36.

37. Realtime admits that it is asserting the '506 patent against Defendant at this time. Otherwise, Realtime denies the allegations in paragraph 37.

38. Realtime admits that Defendant seeks a judgment declaring the '506 patent invalid, but denied that Defendant is entitled to any such judgment.

DEFENDANT'S SEVENTH COUNTERCLAIM
(DECLARATION OF INVALIDITY OF
U.S. PATENT NO. 9,054,728)

39. Realtime incorporates by reference its responses to Paragraphs 1-38 of this Answer to Defendant's Counterclaims as if fully set forth herein.

40. Admitted.

41. Admitted.

42. Realtime admits that Defendant contends the '728 patent is invalid. Otherwise, Realtime denies the allegations in paragraph 42.

43. Realtime admits that it is asserting the '728 patent against Defendant at this time. Otherwise, Realtime denies the allegations in paragraph 43.

44. Realtime admits that Defendant seeks a judgment declaring the '728 patent invalid, but denied that Defendant is entitled to any such judgment.

DEFENDANT'S EIGHTH COUNTERCLAIM
(DECLARATION OF INVALIDITY OF
U.S. PATENT NO. 8,643,513)

45. Realtime incorporates by reference its responses to Paragraphs 1-44 of this Answer to Defendant's Counterclaims as if fully set forth herein.

46. Admitted.

47. Admitted.

48. Realtime admits that Defendant contends the '513 patent is invalid. Otherwise, Realtime denies the allegations in paragraph 48.

49. Realtime admits that it is asserting the '513 patent against Defendant at this time.

Otherwise, Realtime denies the allegations in paragraph 49.

50. Realtime admits that Defendant seeks a judgment declaring the '513 patent invalid, but denied that Defendant is entitled to any such judgment.

DEFENDANT'S NINTH COUNTERCLAIM
(DECLARATION OF INVALIDITY OF
U.S. PATENT NO. 9,116,908)

51. Realtime incorporates by reference its responses to Paragraphs 1-50 of this Answer to Defendant's Counterclaims as if fully set forth herein.

52. Admitted.

53. Admitted.

54. Realtime admits that Defendant contends the '908 patent is invalid. Otherwise, Realtime denies the allegations in paragraph 54.

55. Realtime admits that it is asserting the '908 patent against Defendant at this time. Otherwise, Realtime denies the allegations in paragraph 55.

56. Realtime admits that Defendant seeks a judgment declaring the '908 patent invalid, but denied that Defendant is entitled to any such judgment.

DEFENDANT'S TENTH COUNTERCLAIM
(DECLARATION OF INVALIDITY OF
U.S. PATENT NO. 7,415,530)

57. Realtime incorporates by reference its responses to Paragraphs 1-56 of this Answer to Defendant's Counterclaims as if fully set forth herein.

58. Admitted.

59. Admitted.

60. Realtime admits that Defendant contends the '530 patent is invalid. Otherwise, Realtime denies the allegations in paragraph 60.

61. Realtime admits that it is asserting the '530 patent against Defendant at this time. Otherwise, Realtime denies the allegations in paragraph 61.

62. Realtime admits that Defendant seeks a judgment declaring the '530 patent invalid, but denied that Defendant is entitled to any such judgment.

PRAYER FOR RELIEF

In response to Defendant's Prayer for Relief, Realtime denies that Defendant is entitled to any relief, and in particular to any of the relief requested in paragraphs (A)-(F) of Defendant's Prayer for Relief, and further requests that the Court enter such preliminary and final orders and judgments as are necessary to provide Realtime with the following requested relief:

a. A Judgment in favor of Realtime on Defendant's Counterclaims that the Asserted Patents are not invalid and are enforceable, and that Defendant infringes the '506 patent, the '728 patent, the '513 patent, the '908 patent and the '530 patent.

b. An Order dismissing Defendant's Counterclaims in their entirety and with prejudice;

c. A judgment in favor of Plaintiff that Defendant has infringed, either literally and/or under the doctrine of equivalents, the '506 patent, the '728 patent, the '513 patent, the '908 patent and the '530 patent;

d. A judgment and order requiring Defendant to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for their infringement of the '506 patent, the '728 patent, the '513 patent, the '908 patent and the '530 patent, as provided under 35 U.S.C. § 284;

- e. A judgment and order requiring Defendant to provide an accounting and to pay supplemental damages to Realtime, including without limitation, prejudgment and post-judgment interest;
- f. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees against Defendant; and
- g. Any and all other relief as the Court may deem appropriate and just under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule CV-38, Plaintiff demands a trial by jury of all issues so triable.

Dated: June 23, 2016

Respectfully Submitted,

By: /s/ Marc A. Fenster by permission Claire
Abernathy Henry

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email on this 23rd day of June, 2016.

/s/ Claire Abernathy Henry
Claire Abernathy Henry